



# Compliance Powers of the Australian Building and Construction Commissioner

The compliance powers of the Australian Building and Construction Commissioner (ABC Commissioner) are substantial. They are designed to ensure ABCC investigations are not restricted by a refusal to cooperate.

## WHAT ARE THE COMPLIANCE POWERS?

The ABC Commissioner may compel a person to:

- attend to give answers at an examination
- provide information
- produce documents.

## WHEN CAN THE ABC COMMISSIONER EXERCISE THE COMPLIANCE POWERS?

The ABC Commissioner or a Deputy ABC Commissioner may exercise compliance powers for purposes of an investigation into a contravention by a building industry participant of:

- the *Building and Construction Industry Improvement Act 2005* (BCII Act)
- the *Fair Work Act 2009* (FW Act)
- the *Independent Contractors Act 2006* (IC Act)
- an award or transitional award
- a collective agreement or pre-WorkChoices certified agreement
- an order of Fair Work Australia
- the National Employment Standards
- a Commonwealth industrial instrument.

The powers can be used where the ABC Commissioner believes on reasonable grounds that a person:

- has information or documents, and
- is capable of giving evidence relevant to an ABC Commissioner's investigation.

The powers will only be used after other avenues available to the ABCC to obtain the required information have been explored. The other avenues include voluntarily providing information and cooperating with an ABCC Inspector's investigation.

## HOW WILL I BE NOTIFIED THAT I AM REQUIRED TO COMPLY?

You, or your legal adviser, will be served with a notice under section 52 of the BCII Act. The notice, which is a legal document, will be accompanied by a covering letter. The covering letter is to help people understand their rights and obligations in respect of the proposed examination.

## WHAT IF I DO NOT COMPLY?

You may incur a penalty of imprisonment for 6 months if you:

- do not attend to answer questions, or fail to give answers while attending
- fail to provide the required information or documents as set out by the notice
- refuse to take the required oath or affirmation.

Further, you may incur a penalty of imprisonment for 6, 12 or 24 months if you:

- fail to fully comply with the notice – 6 months
- knowingly provide false or misleading information, documents, or answers – 12 months
- obstruct, hinder, intimidate or resist a Commonwealth public official conducting an investigation – 24 months.

## HOW MUCH TIME DO I HAVE TO COMPLY?

You will have at least 14 days to comply with a notice. In exceptional circumstances, a written request for a change or an extension of time may be granted.

## IF I AM REQUIRED TO ATTEND AN EXAMINATION WHO WILL BE MY POINT OF CONTACT AT THE ABCC?

The covering letter will nominate a contact officer at the ABCC. This officer will be the first point of contact for any enquiries about the notice and the proposed examination.

## HOW LONG WILL MY EXAMINATION TAKE?

The examinations will not, unless exceptional circumstances arise, exceed half a day. The examinations will include regular, scheduled adjournments.

## WHO WILL ATTEND MY EXAMINATION?

The examination will be conducted by the ABC Commissioner, a Deputy Commissioner or an Assistant Commissioner. Other ABCC staff will also be present, as well as counsel assisting. You are entitled to have a legal representative at the examination. The examination is private and will be closed to the public.

## MAY I DISCLOSE WHAT HAPPENED IN MY EXAMINATION?

The presiding officer may issue a legal direction preventing you and your legal representative from disclosing the content and transcript of the examination. These are known as non-disclosure orders. If a non-disclosure order is issued, you will be prevented from making a disclosure to any persons apart from a legal practitioner, for the purpose of obtaining legal advice, until the investigation has concluded or the presiding officer lifts the non-disclosure order. You will be notified in writing as soon as practicable when such an order is lifted.

## WILL I HAVE TO GIVE EVIDENCE UNDER OATH OR AFFIRMATION?

Yes. Failure to take an oath or make an affirmation when required may incur a penalty of imprisonment for up to 6 months.

## WILL THE EXAMINATION BE RECORDED?

Yes, so that there is an accurate record of what is said. A person operating the recording equipment may be in the room. A transcript of the recording will be provided to you within a reasonable period after the examination, providing you with an opportunity to suggest corrections.

## WHERE WILL THE EXAMINATION BE CONDUCTED?

Most examinations are held in capital cities. When necessary, examinations may be held in regional locations. The address and time for the examination will be clearly stated on the notice and covering letter.

## WILL INFORMATION I PROVIDE BE USED AS EVIDENCE AGAINST ME IN COURT?

No. Neither information you provide nor information derived from what you provided will be used against you in court, unless you are being prosecuted for:

- failing to comply with the notice
- knowingly providing false or misleading information, answers or documents
- obstructing, hindering, intimidating or resisting an official in the performance of the official's functions.

**Please note:** The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



### Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50